

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESAL PRICE)	
LITIGATION)	MDL No. 1456
)	Civil Action No. 01-12257-PBS
)	
THIS DOCUMENT RELATES TO:)	Hon. Patti B. Saris
)	
<i>United States of America ex rel. Ven-a-Care</i>)	Magistrate Judge Marianne B. Bowler
<i>of the Florida Keys, Inc. v. Abbott</i>)	
<i>Laboratories, Inc.</i>)	
CIVIL ACTION NO. 06-11337-PBS)	

EXHIBIT D

To The United States Response To Third-Party
TAP Pharmaceutical Product, Inc.'s
Motion to Clarify Paragraph Six
of the Court's September 7, 2007 Order

Sensibaugh, Cynthia HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER
Washington, DC

July 12, 2007

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL : MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:
PRICE LITIGATION : 01-CV-12257-PBS
THIS DOCUMENT RELATES TO :
U.S. ex rel. Ven-a-Care of : Judge Patti B. Saris
the Florida Keys, Inc. v. :
Abbott Laboratories, Inc., : Chief Magistrate
No. 06-CV-11337-PBS : Judge Marianne B.

----- x Bowler

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

----- x
STATE OF ALABAMA, :
Plaintiff, :
vs. : Case No.: CV-05-219
ABBOTT LABORATORIES, INC., : Judge Charles Price
et al., :
Defendants. :

----- x

Henderson Legal Services
202-220-4158

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1 Q. Do you remember when you -- do you
2 recall the first time you ever had to deal with
3 any Medicare drug reimbursement issues during
4 your time at Abbott, the first time?

5 A. Do you mean specific? Generally?
6 What?

7 Q. Yeah. Do you recall the first time
8 when you were at Abbott Labs -- you started
9 working there, I think September of '95; correct?

10 A. Right.

11 Q. After you started working there in
12 September of '95, when was the first time you
13 recall working on a Medicare issue related to
14 drug reimbursement?

15 MS. TABACCHI: Object to the form.

16 A. I remember one of the first things
17 would have been probably in -- let's see -- '96
18 or '97 or so.

19 Q. And what issue was it that you found
20 yourself working on in '96 or '97?

21 A. One of my main focuses then was on a,
22 with a drug called Lupron.

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1 Q. Was Lupron manufactured by Abbott Labs

2 --

3 MS. TABACCHI: Object to --

4 Q. -- to your knowledge?

5 MS. TABACCHI: Object to the form.

6 A. Not to my, not to my knowledge.

7 Q. Do you know who manufactured the drug
8 Lupron?

9 MS. TABACCHI: Object to the form.

10 Q. You can answer.

11 A. Yes.

12 Q. Who manufactured Lupron?

13 A. TAP Pharmaceuticals.

14 Q. So is it fair to say that you worked on
15 reimbursement issues related to TAP as part of
16 your duties in the Washington affairs office for
17 Abbott Labs?

18 MS. TABACCHI: Object to the form.

19 A. I did only with regard to that one
20 issue.

21 Q. Okay. And what was that issue that you
22 worked on with respect to reimbursement for

1 Lupron?

2 A. It was a policy proposed by Medicare
3 carriers.

4 Q. And what was the policy that was being
5 proposed by the Medicare carriers that you worked
6 on?

7 A. The policy was known as, least costly
8 alternative.

9 MR. RIKLIN: I'm sorry?

10 A. Least costly alternative.

11 Q. Explain to me what that policy was, the
12 least costly alternative?

13 MS. TABACCHI: Object to the form.

14 A. Well, it was a policy that Medicare was
15 attempting to use in saying that two drugs that
16 they were reimbursing, currently reimbursing for,
17 were the same and so should receive the same
18 payment.

19 Q. And so -- and the same payment being
20 the payment triggered by the least costly drug of
21 those two drugs?

22 MS. TABACCHI: Object to the form.

1 A. Yes, that's correct.

2 Q. And that other drug was Zoladex; is
3 that correct?

4 A. That is correct.

5 Q. So if I understand this correctly,
6 certain Medicare carriers -- was it more than one
7 carrier or was it just one carrier that was
8 proposing to use the least costly method
9 alternative for Lupron?

10 MS. TABACCHI: Object to the form.

11 A. It started off with one.

12 Q. Do you recall which carrier it was?

13 A. It was Palmetto.

14 Q. Palmetto is located in South Carolina;
15 is that correct?

16 A. That's correct.

17 Q. After Palmetto proposed to implement
18 the least costly alternative method for paying
19 for Lupron, did any other carriers start the
20 process of implementing similar measures?

21 MS. TABACCHI: Object to the form.

22 A. Yes, they did.

1 Q. Do you recall which other carriers
2 started to also utilize the least costly
3 alternative method for reimbursing for Lupron?

4 A. I don't recollect specifically which
5 ones it was.

6 Q. But you recall specifically Palmetto?

7 A. Yes.

8 Q. All right. And so what -- so when this
9 issue cropped up, what did you do to work on the
10 issue of this least costly alternative
11 reimbursement methodology being applied to
12 Lupron? What did you do specifically on it?

13 MS. TABACCHI: Object to the form.

14 A. Basically, what I did was to work with
15 members of Congress to ask them to express
16 concern with the policy to the carriers.

17 Q. What was the impact of Palmetto
18 utilizing the least costly alternative method for
19 reimbursing for Lupron on Abbott? Why did Abbott
20 have an interest in this?

21 MS. TABACCHI: Object to the form.

22 A. Well, because basically it could

1 jeopardize the ability of patients to have access
2 to a drug.

3 Q. Why would the use of least costly
4 alternative method of reimbursing for Lupron
5 impact patient access to the Lupron?

6 MS. TABACCHI: Object to the form.

7 A. Because if Medicare was paying a lower
8 reimbursement rate, it would be, you know,
9 impossible for the physicians to be able to
10 prescribe the drug, you know, if they felt like
11 it was best for their patients.

12 Q. So is it fair to say that by Palmetto
13 using the least costly alternative method of
14 reimbursing for Lupron, it impacted the
15 profitability to the physician of using, using
16 Lupron?

17 MS. TABACCHI: Object to the form.

18 A. I don't have any knowledge of exactly
19 how that, you know, would have worked.

20 Q. Okay. If -- I guess I'm trying to
21 understand what you're saying about the patient
22 care here.

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1 Why is it that a physician would not
2 use Lupron, notwithstanding the fact that Lupron
3 might have been reimbursed using the least costly
4 alternative reimbursement principals?

5 MS. TABACCHI: Object to the form.

6 A. Because it would be, they would be
7 being reimbursed at a rate lower than what they
8 were paying for the drug.

9 Q. I see. So for example, they're paying
10 \$10.00 for Lupron as a hypothetical. Obviously,
11 it's not that much.

12 Is it your testimony then that by the
13 carrier shifting to the least costly alternative
14 method of reimbursing for Lupron, that the
15 physician is going to be reimbursed less than
16 that hypothetical \$10.00 figure?

17 MS. TABACCHI: Object to the form.

18 A. If, well, if the Medicare reimbursement
19 amount for the, if the least costly alternative
20 drug is less than 10 in that hypothetical, then
21 yes.

22 Q. Do you know whether for Lupron that the

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1 Medicare reimbursement amount for Zoladex, since
2 you worked on the issue, do you know whether the
3 reimbursement amount for Zoladex was less than
4 the amount that physicians were paying Abbott to
5 purchase Lupron?

6 MS. TABACCHI: Object to the form.

7 A. Yes, it was my understanding that it
8 was.

9 Q. So Abbott's concern is that physicians
10 would stop purchasing Lupron because it would,
11 they would not be reimbursed fully for the amount
12 that they were paying, that the physicians were
13 paying Abbott to purchase the drug; is that
14 correct?

15 MS. TABACCHI: Object to the form.

16 A. What was our concern was that they
17 wouldn't be able to prescribe the drug, you know,
18 that the patients wouldn't be able to prescribe
19 the drug or the physicians, excuse me. The
20 physicians wouldn't be able to prescribe the drug
21 that was best for the patient, in their view.

22 Q. The reason why they wouldn't be able to

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1 prescribe the drug is because they would be
2 incurring a loss if they purchased the drug from
3 Abbott and then sought reimbursement from
4 Medicare; is that correct?

5 MS. TABACCHI: Object to the form.

6 A. Under the proposed least costly
7 alternative, yes.

8 Q. So it's not that the physicians
9 couldn't prescribe the drug for their patients,
10 it's that they might not prescribe them because
11 they wouldn't be fully reimbursed by Medicare?
12 Was that Abbott's concern?

13 MS. TABACCHI: Object to the form.

14 A. Again, yes, our concern was make sure
15 the patients have access to the medicines.

16 Q. Okay. So when Palmetto and the other
17 carriers proposed to shift to the least costly
18 alternative for reimbursing for Lupron, you
19 mentioned that you worked with members of
20 Congress to try and have them express concern
21 about this change.

22 Did I understand your testimony

1 correctly?

2 A. That's correct.

3 Q. Do you recall which specific members of
4 Congress you reached out to on this particular
5 issue?

6 A. With the issue generally?

7 Q. Yeah. The Lupron least costly
8 alternative issue?

9 A. With regard to Palmetto, the Palmetto
10 action, it was Senator Thurmond.

11 Q. And you worked with -- in Senator
12 Thurmond's office until, I believe it was October
13 1992; is that correct?

14 A. That's correct. Yes.

15 Q. And so did you still have colleagues,
16 former colleagues of yours from Senator
17 Thurmond's staff still working for him when this
18 issue cropped up, I think you said it was '96,
19 '97; correct?

20 A. Yes, I did.

21 Q. You still had colleagues?

22 A. Yes, I did.

1 Q. And did you reach out to particular
2 colleagues in, I guess '96, '97, when this Lupron
3 least costly alternative issue came up on Senator
4 Thurmond's staff?

5 MS. TABACCHI: Object to the form.

6 A. Yes, we did.

7 Q. Who did you talk to on Senator
8 Thurmond's staff about this issue?

9 A. We talked with Ken Rentiers.

10 Q. How do you spell the name, for the
11 court reporter?

12 A. R-E-N-T-I-E-R-S.

13 Q. And what was Mr. Rentiers's job title
14 within Senator Thurmond's office?

15 A. He was head of his project section.

16 Q. What -- was there a project section in
17 Senator Thurmond's office when you were working
18 there?

19 A. Yes, there was. Yes, there was.

20 Q. What exactly, the project section, what
21 was its responsibilities?

22 MS. TABACCHI: Object to the form.

1 A. It dealt mainly with, dealing, kind of
2 our interface with the Federal Government
3 agencies.

4 Q. So the project sections would be the
5 group that would reach out, let's say to the
6 Department of Health and Human Services, reach
7 out to the agency; is that correct?

8 MS. TABACCHI: Object to the form.

9 A. That is correct, yes.

10 Q. And did you speak to anyone else on
11 Senator Thurmond's staff about this Lupron least
12 costly alternative issue, at least with regards
13 to Palmetto and Senator Thurmond's staff?

14 A. I don't recall if we did.

15 Q. Okay. And so you reached out to Mr.
16 Rentiers. What did you ask Mr. Rentiers to do
17 specifically on this issue?

18 MS. TABACCHI: Object to the form.

19 A. To consider asking Senator Thurmond to,
20 on behalf of his constituents to express concern
21 about the proposed policy.

22 Q. And do you know whether Senator

1 Thurmond agreed ultimately to express concern
2 about the proposed policy?

3 A. Yes. Yes.

4 Q. And how did Senator Thurmond or his
5 office express concern about this proposed policy
6 change by Palmetto?

7 A. As I recall, he ended up writing a
8 letter on this.

9 Q. And who did Senator Thurmond write his
10 letter to?

11 A. The specific person?

12 Q. Did he write the letter to Palmetto?

13 A. I don't recall. I don't recall.

14 Q. Did you get a copy of the letter?

15 A. Yes. I'm sure I did. Yes.

16 Q. But you don't remember who the letter
17 was addressed to, whether -- is that your
18 testimony?

19 A. No, I don't. That's correct. I don't
20 recall.

21 Q. Was that all that Senator Thurmond's
22 office did on Abbott's behalf on this particular

1 issue?

2 MS. TABACCHI: Object to the form.

3 A. Yes. As I recollect, that's what he
4 did on behalf of his constituents.

5 Q. Did Palmetto change its policy with
6 regard to, how it was going to reimburse for
7 Lupron after Senator Thurmond wrote this letter?

8 MS. TABACCHI: Object to the form.

9 A. I don't recall the ultimate
10 disposition, ultimate disposition.

11 Q. So with regard to this Lupron
12 reimbursement issue, you reached out to Senator
13 Thurmond's office, you spoke with Senator
14 Thurmond, Senator Thurmond wrote a letter, did
15 you do anything else on Abbott's behalf in terms
16 of working on this reimbursement policy issue
17 involving Lupron?

18 MS. TABACCHI: Object to the form.

19 A. I don't recollect that we contacted any
20 other specific members or --

21 Q. I thought you testified earlier that
22 you contacted, you worked with members of

1 Congress.

2 Did I misunderstand your testimony
3 earlier?

4 A. It might have been more in the general
5 sense than specific members.

6 Q. So on this Lupron least costly
7 alternative reimbursement issue, you, it's your
8 recollection that your work focused solely on
9 contacting Senator Thurmond's office and working
10 with them to, and ultimately having Senator
11 Thurmond write a letter on behalf of his
12 constituents? Is that a fair summary?

13 MS. TABACCHI: Object to the form.

14 Q. Is that a fair summary of your work on
15 that issue?

16 A. That was the main focus, but I remember
17 there was some other legislation, but it's not
18 really that honest and clear in my recollection.

19 Q. We're going to be going through some
20 documents that might help clarify later on.

21 A. Okay.

22 Q. But do you recall whether you or anyone

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1 else in your office reached out to Palmetto
2 directly to discuss this issue of using the least
3 costly alternative method to reimburse for
4 Lupron?

5 A. I don't recall that, no.

6 Q. Why didn't you just call Palmetto and
7 discuss the issue with them?

8 MS. TABACCHI: Object to the form.

9 A. You know, payment issues were not
10 necessarily my, my specialty or anything that I
11 would have been working on at the time.

12 Q. Do you know who at Abbott -- is it
13 that, is it your testimony that your job
14 responsibilities at the Washington affairs office
15 was to work with members of Congress on these
16 types of reimbursement policy issues?

17 A. Yes. At the time, yes.

18 Q. Okay. Was it also your job
19 responsibility to work with Federal agencies
20 directly on reimbursement policy issues?

21 MS. TABACCHI: Object to the form.

22 A. On the Lupron issue, no. No.

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1 Q. Who at Abbott did you work with outside
2 of the Washington affairs office on this Lupron
3 least costly alternative reimbursement issue?

4 A. There wouldn't have been anyone at
5 Abbott.

6 Q. Who at TAP?

7 A. At TAP, it would have been Chris
8 Lockett was my main contact.

9 Q. And who is Chris Lockett?

10 A. It's my understanding -- I don't know
11 his exact title, but was with the -- he headed up
12 their, what they called their state government
13 affairs.

14 Q. Do you know whether TAP had a federal
15 government affairs department?

16 MS. TABACCHI: Object to the form.

17 A. It's my recollection that at that time
18 they did not.

19 Q. So you worked with Mr. Lockett on the
20 Lupron reimbursement issue.

21 Is there anyone else aside from Mr.
22 Lockett at TAP that you worked on with respect to

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1 this Lupron reimbursement issue?

2 A. Not that I recollect. He was the main
3 focus person.

4 Q. Do you know what work Mr. Lockett was
5 doing with respect to addressing Palmetto's
6 decision to reimburse Lupron using the least
7 costly alternative method?

8 MS. TABACCHI: Object to the form.

9 A. He had a number of contacts within the
10 states.

11 Q. Do you know who some of these contacts
12 within the states were?

13 A. Well, the people that he supervised
14 would have had the contacts and perhaps some of
15 the state carriers.

16 Q. So was Mr. Lockett and his staff then
17 going to the -- did they go to the state of South
18 Carolina, for example, to discuss this issue?

19 MS. TABACCHI: Object to the form.

20 A. I'm not -- I don't know whether they
21 had any specific discussions with the people who
22 were, you know, in charge of making the

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1 decisions.

2 Q. Well, let me just sort of take a step
3 back.

4 What exactly, what is it that Mr.
5 Lockett was doing, to the best of your
6 recollection, to -- I think I asked this earlier,
7 but I don't think I have a clear answer. What
8 exactly was he doing to help address this issue
9 of Palmetto employing the least costly
10 alternative method to reimburse Lupron? You were
11 talking to Congress and specifically to Senator
12 Thurmond's office.

13 What was Mr. Lockett doing, to your
14 knowledge?

15 MS. TABACCHI: Object to the form.

16 A. He was, to the extent his -- you know,
17 people who reported to him, his state government
18 affairs people, would be monitoring what was
19 going on in the state and then also talking with
20 patient groups that they had contacts with.

21 Q. Do you know who some of these patient
22 groups were specifically?

1 A. The only one I recall was perhaps a
2 urologist.

3 Q. A urologist group wouldn't have been a
4 patient group though. That would have been a
5 group representing providers; correct?

6 A. Right. And well, perhaps -- also to
7 the extent that there are prostate cancer groups.

8 Q. To your knowledge, was Mr. Lockett or
9 anyone else on his staff contacting any of the
10 advocacy groups, such as American Society for
11 Clinical Oncologists?

12 MS. TABACCHI: Object to the form.

13 Q. Is that one of the groups that Mr.
14 Lockett and his group were reaching out to work
15 on this issue?

16 MS. TABACCHI: Object to the form.

17 A. I don't know specific -- they were
18 involved in it, but I don't know specifically if
19 he was or what the contact was.

20 Q. Did you personally discuss the Lupron
21 reimbursement issue with anyone at, I'm going to
22 call it ASCO or A-S-C-O.

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1 A. I don't recall.

2 Q. Do you recall speaking to any lobbying
3 groups about this Lupron reimbursement issue? I
4 mentioned ASCO. Any others that you might recall
5 talking to?

6 MS. TABACCHI: Object to the form.

7 A. What do you mean by lobbying?

8 Q. We talked about the American Society
9 for Clinical Oncologists, ASCO, that's a group
10 that to advocate on behalf of oncologists;
11 correct?

12 A. Correct.

13 Q. I believe your testimony is you don't
14 recall discussing this Lupron least costly
15 alternative issue with them?

16 A. Uh-huh.

17 Q. Were there any other groups that
18 advocate on behalf of either oncologists,
19 physicians or patients that you recall personally
20 talking to with regard to this Lupron
21 reimbursement issue?

22 A. That I recall talking to?

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1 Q. Yes.

2 A. No.

3 Q. Okay. So you said that this was the
4 first issue that you worked on, reimbursement,
5 Medicare drug reimbursement issue you worked on
6 was this Lupron least costly alternative?

7 A. Right.

8 Q. Do you recall working on any other
9 Medicare drug reimbursement issues?

10 A. Ever at Abbott?

11 Q. Let's go chronologically, and just walk
12 through the chronology you had where you recall
13 the issues that you worked on that dealt with
14 Medicare drug reimbursement.

15 What was the next one?

16 A. Well, we did, we did work on, kind of
17 as a follow-up to the Lupron, trying to get some
18 language in Medicare legislation.

19 Q. What kind of language in Medicare
20 legislation?

21 A. It was basically to only -- to not
22 allow Medicare to use the least costly